



Government Contracts – 'An Analytical Study of Article 299'

KEYWORDS

TORAL MAHENDRAKUMAR RATHOD

LLM batch 2013-14 (Reg. No.13LM39) B.Com., LL.B. Advocate (High Court of Gujarat)

Introduction:

Governments Contracts that is the contract in which Government or some authority is one party and private individual is the other party. Government Contracts have come to assume a very significant place and great importance in modern economy.

"To-day the Government, is a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. "

Now the question has assumed a very great importance, how Government can form contracts with the private individuals in order to dispense such huge wealth for public purpose. In other words we can say the growth of the nation will reduce or slow down up to great extent.

Aronson and Whitmore singled out some distinguishing features of government contracts which are:

- i. The policies sought to be achieved by the contracts;
- ii. The importance from a public interest point of view of the subject matter, and of the need for flexibility and control; and
- iii. The large amounts of public money often involved .

Thus there is a need to develop some norms to protect the individual interest in such wealth. The basic question is to regulate structure and discipline government discretion to confer such benefits.

Formation of Contract:

The law relating to the Government contracts is provided under Article 299 of the Constitution of India. Article 299 (1) reads as follows:

"All the contracts made in the exercise of the executive power of the union or of a state shall be expressed to be made by the President, or by the Governor of the state as the case may be, and such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of President or the Governor by such persons and in such manner as he may direct or authorise."

Article 299 (1) of the Constitution derives its Source from Section 173 (3) of The Government of India Act 1935 .

Article 299 (1) lays down three requisite conditions for the formation of Government Contracts which are as follows,

- i. All the Contracts shall be expressed to be made by the President or by the Governor as the case may be.
- ii. All such Contracts and assurances of the property made in the exercise of the executive power shall be executed on the behalf of the President or the Governor as the case may be.
- iii. All such Contacts must be executed by such person and in such a manner as may be authorised or directed by the President or Governor.

"It is clear that the Parliament intended in enacting the provision contained in s. 175(3) that the State should not be saddled with liability for unauthorised contracts and with that object provided that the contracts must show on their fact that they are made on behalf of the State, i.e., by the Head of the State and executed on his behalf and in the manner prescribed by the person authorised.

Contract Must Be In Writing:

In order to be valid under Article 299(1) of the Constitution, a contract has to be writing. In Article 299 (1) word "executed" is used which written Contract is necessary. Thus oral contract is no contract at all for the purpose of Article 299 (1). Now the question arises whether the contract should be written on a formal document or mere correspondence through letters or written offer and acceptance is sufficient. In Union of India v. A. L. Rallia Ram , Supreme Court upheld the validity of a contract entered into between the government of India and Respondent through mere correspondence.

Executed by Authorised Person:

Under article 299 (1) Contract has to be entered on the behalf of the Government by the person authorised for that purpose by the President or Governor as the case may be. A contracted executed by a person not authorised for that purpose is no contract, hence null and void. Government can only held bound by the contracts which are entered and executed by the authorised authority. Article 299 (1) does not prescribe any particular mode to confer authority on a person does not prescribe any particular mode to confer the authority on a person to execute the contract on the behalf of the government.

Contracts not in Conformity with Article 299 (1):

The general proposition is that no legal relationship will ensue from a contract which is not in conformity of article 299 (1), such a contact is void and unenforceable both sides. Nether Government nor the private Contracting party is

bound by the contract which does not comply article 299 (1). However there arise two very important questions. First is that whether government can ratify the contracts not in conformity with article 299 (1). And second is that whether a contract not in conformity with article 299 (1) can be enforced against the officer signing the contract because of section 230 (3) of Indian Contract Act. Earlier a view was expressed that when a contract was not in conformity of article 299 (1), the exemption of 299 (2) would not apply to the officer executing the contract and it could be enforced against him personally under section 230 (3). In *Chatturbhuj Case* Supreme Court ruled that "There can be no doubt that the Chairman of the Board of Administration acted on

behalf of the Union Government and his authority to contract in that capacity was not questioned.

Restitution:

One very important which needs a consideration here is that whether one can recover any payment made by him to the Government under a contract which is not in conformity with Article 299 (1). What is the base of restitution claim against the government. For instance a person pays tax under a tax law which is ultra vires, whether he can claim refund of the amount paid under a void statute? These cases relate restitution to the public law doctrine of ultra vires. No charge can be levied by the administration without the authority of law so any payment in response to an unlawful official demand ought to be refunded unless there is a very good reason to the contrary. For some time however the courts are moving away from the broad ultra vires principle to the narrow principle of restitution as contained in section 72 of Indian Contract Act

There is no distinction made under section 72 between mistake of fact and mistake of law. However Supreme Court in *S. T. O v. Kanhaiya Lal Mukand Lal Saraf* ruled that the expression "Mistake" under section 72 is wide enough to include both mistake of fact and mistake of law. In *State of Madhya Pradesh v. Bhailal Bhai sales tax* were being levied by the Government which the petitioner made the payment of tax later, the tax was held to be unconstitutional. Applicability of Doctrine of Estoppel to Government Contracts:

So far law has been made clear that if effect is given to the contract which is not in conformity with Article 299 (1) it will amount to by-passing a very important Constitutional provision. A contract which is not in conformity with article

299 (1) is void, it cannot be enforced against any party either government or private party. If the contention of the respondent regarding the ratification and estoppel is accepted that would render a very important provision useless, which is a safeguard for general public.

No Personal Liability:

Article 299 (2) of the Constitution protects the President and the Governor from personal liability. It says that "Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof".

Conclusion:

Contract is basically a matter of private law, however the law relating to the Government contracts in the modern times becoming distinct from the private Contract. In this area there is a need to protect public interest and also to protect individuals against unfair exercise of administrative power. It is axiomatic that the government or any of its agencies ought not to be allowed to act arbitrarily and confer benefits on whomsoever they want. Therefore there is a necessity to develop some norms to regulate and protect individual interest in such wealth

and thus structure and discipline the government discretion to confer such benefits. Many a time, the standard forms of contract are used in which the individuals have no choice but to sign on the dotted line and the terms and conditions of the so-called 'Contract' are dictated by the monopolistic state authority concerned and the individuals has very little say in the matter. The whole jurisprudence of Government Contract is governed by Article 299 of the Constitution of India. In India we can say that law regarding to the Government Contract is still in the evolution phase. While in French Jurisprudence, a distinct branch of law contract administratifs, has arisen to take care of the distinctive features of government contracts. In U.S.A the law relating to Government contract is also quite sophisticated. In order to protect the public and individual interest and to ensure impartiality, fairness and non arbitrariness in Government contract there is a need to pass a new law which will provide norms and regulations to protect public and individual interest in Government Contracts.

REFERENCE

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